

Costco: Costco disputes liability, as well as the nature and extent of Plaintiff's alleged

1 damages.

2 **B. Factual and Legal Disputes Genuinely in Dispute**

3 **Plaintiff:**

4 a. Whether Defendant owed Plaintiff the duty to exercise ordinary care in its
5 ownership, possession, control, maintenance and use of the premises to reduce or eliminate
6 risks of harm created by unreasonably dangerous conditions.

7 b. Whether Defendant had notice of the unreasonably dangerous condition
8 prior to Plaintiff slipping and falling by creating the unreasonably dangerous condition.

9 c. Whether Defendant had notice of the unreasonably dangerous condition
10 prior to Plaintiff slipping and falling when Defendant's employees knew a liquid substance
11 and food had accumulated on the floor.

12 d. Whether Defendant had constructive notice of the unreasonably dangerous
13 condition prior to Plaintiff slipping and falling when Defendant's employees in the exercise
14 of reasonable care should have known that the liquid substance and food was accumulating
15 on the floor.

16 e. Whether Defendant breached the duty and obligation to keep the warehouse
17 premises reasonably safe for Plaintiff by failing to maintain the standard of care as defined
18 by Defendant's operating policies and procedures to prevent slip and fall incidents from
19 occurring.

20 f. Whether Defendant's mode of operation increased the likelihood that liquid
21 substances and food would accumulate on the floor in areas open to customers/invitees in the
22 warehouse, was a breach of the duty to keep the premises reasonably safe for Plaintiff.

23 g. Whether as a proximate result of Defendant's negligence, and vicarious
24 liability for its employees' negligent conduct as set forth herein, Plaintiff slipped and fell
25 while a business invitee in the warehouse/retail store, which proximately caused Plaintiff to
26 suffer injuries and damages.

27 h. Whether Plaintiff can recover money damages for reimbursement of her past
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and future medical expenses, and past and future general damages for her pain, suffering, loss of enjoyment of life, and impairment to her activities of daily living.

Defendant:

- a. Whether Plaintiff can establish that Costco breached any duty owed to Plaintiff.
- b. Whether Plaintiff can establish the existence of a dangerous condition resulting from any act or omission on the part of Costco.
- c. Whether Plaintiff can establish that Costco had actual or constructive notice of a dangerous condition.
- d. Whether Plaintiff bears any contributory/comparative fault for the Incident and all damages allegedly arising therefrom.
- e. Whether Plaintiff can establish that her alleged injuries and other claimed damages resulted from the condition of which she complains.
- f. Whether Plaintiff's medical treatment was reasonable and necessary.
- g. Whether Plaintiff can establish her claimed special and general damages.

C. Jurisdiction

Plaintiff filed this action in the Superior Court of the State of Arizona. Defendant removed the action on the basis of diversity of citizenship as well as the amount in controversy exceeding \$75,000.00 under 28 U.S.C. §§ 1332, 1441 and 1446. The Court determines diversity jurisdiction at the time of removal. As of the date this matter was removed, Plaintiff was a resident of Arizona and Costco was a citizen of Washington.

Venue in the District of Arizona is proper pursuant to 28 U.S.C. § 1391 because Costco regularly transacts business within this District, is otherwise subject to personal jurisdiction in this District, and a substantial part of the events giving rise to the claims occurred in this District and Division.

D. Service of Parties

All parties have been served.

E. Dispositive Issues

None at this time.

F. Status of Related Cases

There are no related cases pending before other courts or other judges of this Court.

G. Initial Disclosures

The parties previously exchanged Initial Rule 26.1 Disclosure Statements while the matter was in Superior Court. The parties will exchange Initial Disclosures that comply with Rule 26(a), *Federal Rules of Civil Procedure*, no later than September 22, 2023.

H. Proposed Deadlines

1. Deadline for amending the pleadings: **September 22, 2023**
2. Expert Discovery
 - a. Plaintiff's disclosure of expert testimony: **October 27, 2023**
 - b. Defendant's disclosure of expert testimony: **December 22, 2023**
 - c. Rebuttal expert testimony: **January 26, 2024**
 - d. Completion of expert depositions: **March 22, 2024**
3. Deadline for written discovery and fact witness depositions: **December 22, 2023**
4. Deadline to disclose ESI: **December 22, 2023**
5. Deadline to file dispositive motions: **April 19, 2024**
6. Deadline to conduct good faith settlement negotiations: **January 26, 2024**

I. Estimated Trial Length

The parties anticipate a four (4) day trial.

J. Jury Trial

Plaintiff has requested a jury trial. Costco does not contest.

K. Prospects for Settlement

The will parties have already begun and will continue to consider and discuss the prospect for settlement. While the parties believe that this is a case that can and should be settled informally, the parties may need to request the assistance of a Magistrate Judge in facilitating a settlement conference at the end of fact discovery.

1 **L. Unusual, Difficult, or Complex Problems**

2 None at this time.

3 **M. Other Matters**

4 None at this time.

5 **DATED** this 29th day of August, 2023.

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7 **THE SCHMIDT LAW GROUP, P.C.**

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9 By: /s/ Eric W. Schmidt
10 ERIC W. SCHMIDT
11 Attorneys for Plaintiff

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13 **BREMER WHYTE BROWN & O'MEARA LLP**

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15 By: /s/ Eric W. Schmidt (w/permission)
16 JOHN J. BELANGER
17 RYAN S. LEIBEL
18 Attorneys for Defendant
19 Costco Wholesale Corporation
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants, as well as e-mailed a copy as follows:

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